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September 2, 2009

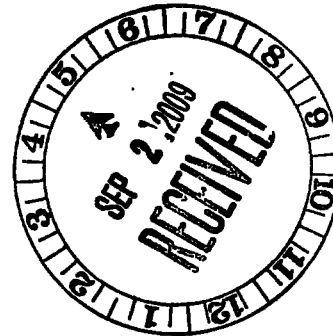
Via e-filing

Ms. Anne K. Quinlan, Acting Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20024

ENTERED
Office of Proceedings

SEP - 2 2009

Part of
Public Record



Re: STB Finance Docket No. 35290, *Petition for Declaratory Order of West Point Relocation, Inc. and Eli Cohen*

Dear Ms. Quinlan:

Enclosed for filing in the above-captioned docket please find the Reply of Horizon Lines, LLC.

Please feel free to contact me if you have any questions about this matter.

Sincerely,

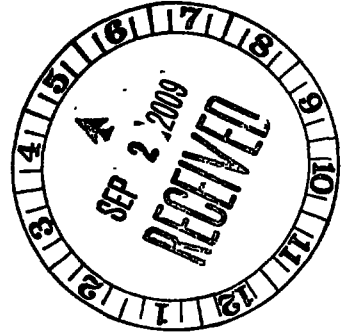

C. Jonathan Benner

cc: Counsel for Petitioners (via hand delivery)
Robert Zuckerman

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Finance Docket No. 35290

**PETITION OF
WEST POINT RELOCATION, INC.
and ELI COHEN
FOR A DECLARATORY ORDER**



REPLY OF HORIZON LINES LLC

Pursuant to 49 CFR § 1104.13, Horizon Lines LLC (“Horizon”) hereby replies to the Petition for Declaratory Order of West Point Relocation, Inc. (“West Point”) and Eli Cohen (collectively, “Petitioners”), which was filed with the Surface Transportation Board (“Board” or “STB”) on August 13, 2009 in the above-captioned docket.

As explained in more detail below, Horizon does not oppose the commencement of a declaratory order proceeding by the Board pursuant to the Referral Order issued by Judge Lew of the U.S. District Court for the Central District of California on July 20, 2009 in case CV-08-6362-RSWL, *Horizon Lines LLC v. West Point Relocation, a.k.a West Point Relocation, Inc., and Eli Cohen*. However, Horizon strenuously objects to the relief sought by Petitioners; Horizon requests that the Board find the tariff provision at issue is not an unreasonable practice.

Horizon notes that Judge Lew’s Referral Order specifically stated that only Eli Cohen was given leave to seek the input of the Board on this matter. See Appendix 1 to

the Petition for Declaratory Order. Horizon reserves any rights it may have regarding this deviation from the Referral Order.

Given the Board's precedent in commencing declaratory order proceedings upon referral of discrete issues from courts, Horizon does not oppose the commencement of a declaratory order proceeding in this case. *See, e.g., Railroad Salvage & Restoration, Inc. – Petition for Declaratory Order – Reasonableness of Demurrage Charges*, STB Docket 42102, slip op. at 2 (served Dec. 20, 2007). Nevertheless, Horizon retains the right to object if there is any attempt to make improper use of this proceeding. Additionally, Horizon's participation in this proceeding does not signify abandonment of any arguments Horizon may have in the proceeding in the U.S. District Court for the Central District of California or any other forum.

Horizon does not agree with the lengthy procedural schedule proposed by Petitioners. The question presented in the Petition is a discrete and narrow matter which is part of ongoing litigation in the U.S. District Court for the Central District of California. It is in the interest of all parties, including the Court, to resolve this matter as expeditiously as possible so that the litigation can move forward. Consequently, Horizon proposes the following procedural schedule:

Day 1	Board issues notice commencing declaratory order proceeding
Day 30	Opening statement of Petitioners
Day 60	Reply statement of Horizon
Day 75	Rebuttal statement of Petitioners

Respectfully submitted,

A handwritten signature in black ink, appearing to read "C. Jonathan Benner". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

C. Jonathan Benner

Leonard Fleisig

David E. Benz

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Attorneys for Horizon Lines LLC

Dated: September 2, 2009

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of September 2009, I served a copy of the foregoing Reply by hand upon the counsel for Petitioners at the following address:

Edward D. Greenberg, Esq.
Brendan Collins, Esq.
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David E. Benz